

Please amend the application as follows:

**IN THE CLAIMS:**

Please cancel claim 12. ✓

✓  
Please amend the following claims.

- B' 1. (Once amended) A method for the analgesic treatment of a livestock animal comprising administering to said animal a pharmaceutically effective amount of a palatable solution of ketoprofen and an oral base in water.

**REMARKS**

**35 USC § 102 (b) Rejection (Dondi et al.)**

Claims 1 and 12 stand rejected under 35 USC § 102 (b) as being anticipated by Dondi et al. (U.S. Patent No. 5,624,682) which allegedly teaches a pharmaceutical solution which comprises ketoprofen and a pharmaceutically tolerated base. Claim 1 has now been amended and claim 12 has now been deleted. Specifically, Claim 1 has been amended to claim the method of treatment of a livestock animal with a palatable solution of ketoprofen and an oral base in water.

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof, functioning in substantially the same

way to produce substantially the same results. As noted by the Court of Appeals of the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Because claim 1 as amended now includes the limitation of a “palatable solution of ketoprofen and an oral base in water”, each and every limitation is now not found in the cited reference. Thus, the basis for this rejection has now been removed and a withdrawal of this rejection is respectfully requested.

Applicants have previously noted that “Dondi et al. fail to disclose a pharmaceutical solution comprising ketoprofen and an edible base for oral medicating of animal.” The office action erroneously concludes that “[t]his, however, is merely a gratuitous assertion to the contrary of the Examiner’s findings, which findings are supported by the specific teachings of Dondi et al.” Nowhere does Dondi et al. provide for a pharmaceutical solution comprising ketoprofen and an edible base for medicating of animal in water. In fact, Dondi et al. specifically teaches the addition of only small amounts of sterile water, etc in column 2 , lines 14-19. To that end, one of ordinary skill in the art may conclude that the pharmaceutical formulations proposed by Dondi et al. would precipitate out of a large water solution as contemplated by the current invention.

**35 USC § 102(b) Rejection (Daher)**

Claim 1 stands rejected under 35 USC § 102(b) as being anticipated by Daher (U.S. Patent No. 5,348,745). Claim 1 has now been amended to claim the method of treatment of a livestock animal with a palatable solution of ketoprofen and an oral base.

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof, functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals of the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Daher teaches the use of a salt of an organic acid -- one of ordinary skill in the art recognizes that acid are not stable in water if left in the form proposed by Daher and thus, tableting is conducted to take the water away. In contrast, the present invention, as now amended in claim 1, claims the method of treatment of a livestock animal via "a palatable solution of ketoprofen and an oral base in water." Accordingly, it is therefore submitted that the amended claim is novel over the prior art cited and the rejection based on 35 USC §102 be withdrawn.

**35 USC §103 Rejection (Dondi et al.)**

Claims 1, 5-13, and 17 stand rejected under 35 USC §103(a) as being unpatentable over Dondi et al. (U.S. Patent No. 5,624,682). Claim 1 has now been amended to claim the method for treating livestock animals and for the reasons outlined above, one of ordinary skill in the art would not expect that the pharmaceutical solution proposed by Dondi et al. to work in the method as claimed herein. Nowhere does Dondi et al. provide for a pharmaceutical solution comprising ketoprofen and an edible base for medicating of animal in water. In fact, Dondi et al. specifically teaches the addition of only small amounts of sterile water, etc in column 2 , lines 14-19. To that end, one of ordinary skill in the art may conclude that the pharmaceutical formulations proposed by Dondi et al. would precipitate out of a large water solution as contemplated by the current invention. The withdrawal of this rejection is respectfully requested.

**35 USC §103 Rejection (Dondi et al.)**

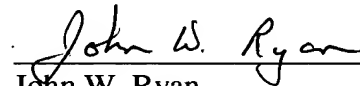
Claims 1-4 and 13-20 stand rejected under 35 USC § 103(a) as being unpatentable over Daher (U.S. Patent No. 5,348,745). Claim 1 has now been amended to claim the method for treating livestock animals and for the reasons outlined above, one of ordinary skill in the art would not expect that aqueous granulating solution containing a salt of an edible organic acid to be stable but instead would disassociate in large amounts of water. The withdrawal of this rejection is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are now in condition for allowance. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully Submitted,

WILMER, CUTLER & PICKERING

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

1. (Once amended) [A pharmaceutical solution comprising ketoprofen and an edible base for oral medicating animals.] A method for the analgesic treatment of a livestock animal comprising administering to said animal a pharmaceutically effective amount of a palatable solution of ketoprofen and an oral base in water.